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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,130	01/09/2001	Benjamin Englander	P/1123-53	6441
2352	7590	12/15/2003	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			NGUYEN, THONG Q	
		ART UNIT	PAPER NUMBER	
		2872		

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)
	09/757,130	ENGLANDER, BENJAMIN
	Examiner Thong Q. Nguyen	Art Unit 2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 June 2003 and 15 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22.                    6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on June 20, 2003 has been entered.

### ***Response to Amendment***

2. The present Office action is made in response to the pre-amendments filed by the applicant on 6/20/2003 and 7/15/2003 in which applicant has amended the specification in pages 1, 4-6, the abstract, and claim 1.

### ***Specification***

3. The lengthy specification which is amended by the pre-amendments has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

4. The disclosure is objected to because of the following informalities: Page 4: lines 24-27, the description thereof "This persistent and long standing problem...thereto" is confusing with respect to the description thereof "An occasional problem which has...optimally mounted" provided in the same page on lines 19-23 which is amended

by the pre-amendment filed on 6/20/2003. In other words, it is unclear about the status of the problem referred by the applicant by the use of both terms "occasional" and "persistent". Appropriate correction is required.

***Allowable Subject Matter***

5. Prosecution on the merits of this application is reopened on claims 1-8 considered unpatentable for the reasons indicated below:

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1-6 and 8, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stout (U.S. Patent No. 4,822,157, of record) in view of Falge (U.S. Patent No. 1,768,354, of record).

Stout discloses a mirror assembly for use with a school bus wherein the mirror assembly is attached to a front fender of the bus for the purpose of providing the driver of the bus visual access to the area in front of the school bus as well as to the sides of the bus. The mirror assembly as stated at column 2 and shown in figure 1 comprises a mirror element (26) having an oval ellipsoidal shape and configured as a convex, generally dome shaped and contiguous mirror surface with its contoured outer surface facing in a direction of the driver. The mirror assembly is secured to a mirror pole (20) via a securing means (48, 50, 52). The mirror pole (20) in turn is inherently secured to the front fender of the school bus. See column 3 and fig. 1. As such, the mirror assembly provided by Stout meets

all of the limitations of the device as claimed except a portion of the mirror element being treated for reducing glare.

The treatment on a portion of the mirror element, in particular, on an upper portion of the mirror, for the purpose of reducing glare is known to one skilled in the art as can be seen in the optical system provided by Falge. In particular, Falge discloses a mirror system having a mirror surface wherein the upper portion of the mirror is treated to reduce glare without rendering the treated portion opaque as to be non-reflective. See Falge, page 2 and fig. 8, for example. It is also noted that the portion being treated (36) for reducing glare as shown in the embodiment of figure 8 has an area of one-half of the upper one-third of the mirror (see page 2, column 2, lines 93-101). See also **In re Wertheim**, 541 F. 2d 257, 191 USPQ 90 (CCPA 1976), "the disclosure in the prior art of any value within a claimed range is an anticipation of that range." See also, **Titanium Metals Corporation of America**, 227 USPQ 773 (Fed. Cir. 1985), **In re Petering**, 301 F. 2d 676, 133 USPQ 275 (CCPA 1962).

With regard to the feature concerning the formation of the coating band as recited in claim 4, such a feature is directed to a method step and thus is not given a patentable weight.

Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the mirror assembly provided by Stout by making a portion of the upper one-third of the mirror as a treated portion for reducing glare.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stout in view of Falge as applied to claim1 above with or without Malifaud (U.S. Patent No. 3,199,114, of record).

The combined product as provided by Stout and Falge as described above meets all of the features recited in present claim 7 except the treated portion is located on one side relative to the minor axis of the mirror surface. However, such an arrangement of a treated portion with respect to the area of an optical element having a substantially oval shape as claimed is merely that of a preferred embodiment and no criticality has been disclosed. The support for this conclusion is found in the present specification in which applicant has taught that the treated portion is extended on both side of the minor surface as can be seen in the embodiment described at pages 4-5 and illustrated in present figure 2A-2C. Furthermore, the use of an anti-glare portion which is located on one side of an optical element having an oval shape and on a side relative to a minor axis of the optical element is known to one skilled in the art as can be seen in the anti-glare system provided by Malifaud. See column 5 and fig. 5. Thus, absent any showing of criticality, it would have been obvious to one skilled in the art at the time the invention was made to utilize the teaching, i.e., use the antiglare portion on just one side of an optical element as suggested by Malifaud in the combined product provided by Stout and Falge by using a portion on just one side of the minor axis of a mirror surface which portion is necessary to the driver's field of

view as a treated portion for reducing glare and simultaneously reducing the manufacture cost.

***Response to Arguments***

9. Applicant's arguments filed on 01/02/2003 have been fully considered but they are not persuasive.

A) Regarding to the rejection of claims 1-6 and 8 under 35 USC 103(a) over the art of Stout in view of Falge, applicant has argued that the present invention distinguishes over the combined product provided by the cited art in two important respects. In particular, applicant has stated that the mirror provided by Falge is actually two mirrors because the mirror of Falge is pivotally mounted which allows a driver to adjust its position; and the treatment is applied to the rear surface of the mirror while the treatment of the present application is in the outer surface. The examiner respectfully disagrees with the applicant for the following reasons.

First, the examiner does not agree with the applicant's opinion about the structure of the mirror assembly provided by Falge. While the mirror of Falge is able to pivot for daylight viewing and for nighttime viewing; however, in use, for instance, in the nighttime viewing, the mirror of Falge is a single mirror which provide a wide field of view of a single screen in which a portion of the screen is viewed by the reflection of light from a portion of outer surface of the mirror which is treated and the other portion of the screen is viewed by the reflection of light from the other portion of the outer surface which is not being treated.

Second, regarding to the applicant's argument relating to the anti-glare treatment formed on the rear surface of the mirror as argued by the applicant, the examiner respectfully disagrees and respectfully invited the applicant to review the art of Falge. In particular, Falge's Patent in page 1 which discloses that the upper portion of the mirror is the portion which causes the glare problem; and in page 2 which discloses an anti-glare treatment to compensate the glare problem. The treatment is made by one of the two embodiments in which the first embodiment discloses the use of a low reflective material at the rear surface of the upper portion of the mirror (see page 2, the left column and fig. 2) and the second embodiment discloses the use of a shield on a portion of the outer surface of the mirror (see page 2, the right column, and fig. 5).

The use of an anti-glare treatment on the front (or outer surface) facing the direction of a driver as disclosed by Falge is the embodiment used by the examiner in the rejection. Applicant is respectfully invited to review the rejection as set forth in the Office action of 11/12/02, pages 2-3 and repeated in this Office action which rejection refers to the embodiment disclosed in page 2 and shown in figure 8 of the Falge reference. Applicant should also noted that while the claim recites that a portion of the outer surface of the mirror facing the direction of a driver is treated; however, the claim has not provided any specific feature(s) for the outer surface being treated. The use of a shield in front of a portion of the outer surface of the mirror as provided by Falge is considered as a treatment to the outer surface of the mirror which portion is covered by the shield.

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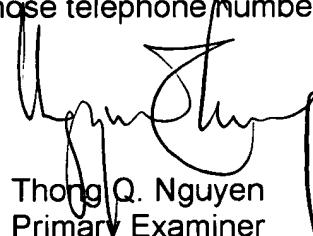
B) With regard to the rejection of claim 7 under 35 USC 103(a) over Stout in view of Falge with or without Malifaud, it is noted that since applicant has not provided any arguments; therefore, the claim is rejected for the same reasons as set forth in the Office action of 11/12/02, pages 3-4 and repeated in this Office action

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (703) 308-4814. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A Dunn can be reached on (703) 305-0024. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.



Thong Q. Nguyen  
Primary Examiner  
Art Unit 2872

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